

DEPARTMENT OF THE NAVY
Office of the Secretary
1000 Navy Pentagon
Washington DC 20350-1000

SECNAVINST 1770.3B
ASN(M&RA)
16 August 1996

SECNAV INSTRUCTION 1770.3B

From: Secretary of the Navy
To: All Ships and Stations

Subj: MANAGEMENT AND DISPOSITION
OF INCAPACITATION AND IN-
CAPACITATION BENEFITS FOR
MEMBERS OF NAVY AND MARINE
CORPS RESERVE COMPONENTS

Ref: (a) 10 U.S.C. 1074
(b) 10 U.S.C. 1074A
(c) 37 U.S.C. 204
(d) 37 U.S.C. 206
(e) DOD Military Pay and Allowances
Entitlements Manual (DODPM)
(f) DOD Directive 1241.1 of 3 Dec 92
(NOTAL)
(g) SECNAVINST 1001.33A (NOTAL)
(h) Manual of the Judge Advocate
General (JAGMAN)
(i) SECNAVINST 1850.4C (NOTAL)
(j) Joint Federal Travel Regulations
(JFTR)
(k) NAVMEDCOMINST 6320.3B
(l) Manual of the Medical Department
(MANMED)

1. **Purpose.** To revise procedures and guidelines for administering incapacitation and incapacitation benefits under references (a) through (l) in the Navy and Marine Corps Reserve Components. This instruction has been revised substantially and should be reviewed in its entirety.

2. **Cancellation.** SECNAVINST 1770.3A.

3. **Policy.** The Notice of Eligibility (NOE) program provides certain incapacitation benefits to eligible Navy and Marine Corps Reservists who incur or aggravate injuries, illnesses, or diseases during periods of inactive duty training or during periods of active duty. Benefits available to eligible members include dental and medical care

treatment, hospitalization, and incapacitation pay. Prompt and accurate preparation, reporting, and submission of required documentation are essential to ensure the effective and efficient administration of this program, and to ensure eligible members receive the benefits this program affords.

4. **Applicability.** This instruction applies to members of the Reserve components, including those on Active Duty for Special Work (ADSW), excluding Training and Administration of Reserve (TAR) and Active Reserve (AR) personnel.

5. **Effective Date.** Cases initiated under a Notice of Reported Condition made prior to issuance of this instruction are within the scope of the law, rules, and regulations in existence at the time the condition arose.

6. **Issuing Authority for NOE Incapacitation Benefits.** The Chief of Naval Operations (CNO) and the Commandant of the Marine Corps (CMC) are authorized to determine eligibility for and authorize benefits for incapacitated Reservists. Authority may be redelegated to the following field activities:

a. **Naval Reservists.** Commander, Naval Reserve Force (COMNAVRESFOR).

b. **Marine Corps Reservists.** Commander, Marine Forces Reserve (COMMARFORRES).

7. **Definitions.** The following definitions apply for purposes of this instruction:

a. **Active Duty.** Full-time duty in the active military service of the United States, limited to:

(1) Active Duty Training (ADT), Annual Training (AT), Initial Active Duty for Training (IADT), Active Duty for Special Work (ADSW).

(2) Periods of authorized leave or liberty from the active duty delineated in paragraph 7a(1).



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b. Inactive Duty Training (IDT). Duty prescribed for Reservists by the Secretary of the Navy (SECNAV) under reference (g), and special additional duties authorized for Reserves by an authority designated by the SECNAV in reference (g) and performed voluntarily in connection with prescribed training or maintenance activities of their units. A Reservist shall be considered in an IDT status beginning at the time of arrival at the designated place of muster or government furnished quarters when remaining overnight for the purpose of commencing one or more consecutive IDT periods. Such status shall continue until the member completes the final IDT period on the last day of such periods. Portal-to-portal coverage shall continue to be governed by existing statutes. It does not include work or study in connection with a military correspondence course or attendance in an inactive status at an educational institution under the sponsorship of the Armed Forces.

c. Civilian Earned Income. Income received from non-military employment or self-employment including but not limited to salaries, wages, tips, commissions, compensation for personal services actually rendered, professional fees, and income from an income protection plan, vacation pay or sick leave which the member elects to receive. Civilian earned income does not include rents, royalties, dividends, interest, retirement pays, welfare payments, or other non-taxable government benefits.

d. Diseases. Diseases are those identified in enclosure (3) of reference (i).

e. Emergency Care. Medical or dental treatment of severe, life-threatening, or potentially disabling conditions requiring intervention to prevent undue suffering or loss of life, limb, or eyesight.

f. Hospitalization. Inpatient care in a Medical Treatment Facility (MTF) or nonfederal hospital when care is emergent or has the prior approval of the Office of Medical and Dental Affairs (OMDA).

g. Illness. A temporary interruption, cessation, or disorder of body functions, systems, or organs.

h. Incapacitation Pay. Pay authorized by a NOE. This pay shall not exceed the military pay and allowances for an active duty member of the same grade and years in service, compensating a Reservist for a service incurred medical condition.

i. Income Protection Plan. A substitute for earned income that, but for an incapacitation, a member would have received from nonmilitary employment or self-employment and which is actually received by the member. Such insurance can be paid for by either the member or some other party (e.g. an employer).

j. Injury. A damage or wound to the body, traumatic in nature. Poisoning as the result of ingestion of a toxic, corrosive, caustic, or noxious substance is generally considered as an injury.

k. Line of Duty (LOD). The duty status and conduct of a member at the time an injury, illness, or disease is incurred or aggravated by service. Reference (h) provides guidance on the relationship between LOD and entitlement to incapacitation benefits. The following guidelines will be applied for the purposes of this instruction.

(1) An injury, illness, or disease can be determined to have been incurred or aggravated in the line of duty if the member, at the time of incurrence or aggravation, was performing active duty or IDT, or was traveling directly to or from IDT unless his or her conduct was such that the incurrence or aggravation occurred:

(a) As the result of the member's own misconduct or willful neglect.

(b) While avoiding duty by deserting the service.

(c) During a period of unauthorized absence.

(d) While confined under sentence of a court-martial which included an unremitted dishonorable discharge.

(e) While confined under sentence of a civil court following conviction for an offense which is defined as a felony by the law of the jurisdiction where convicted.

(2) An injury, illness, or disease noted prior to entry into active duty or IDT, or which according to accepted medical principles had its inception prior to such service, is not service incurred and therefore not covered by this instruction. "Incurred" refers to the date or time when an injury, illness, or disease is contracted or suffered, as distinguished from a later date when it is determined that, because of such injury, illness, or disease members have become unfit to perform their duties.

(3) Any physical incapacitation due to natural progression of an injury, illness, or disease is considered to have been incurred at the time the injury, illness, or disease was contracted. When an increase in physical impairment during service is in excess of that due to natural progression of the injury, illness, or disease, then the increase may be due to aggravation by service.

l. Lost Civilian Earned Income. The difference between a member's normal non-military earned income received (from employment or self-employment, including income from an income protection plan, vacation pay, and sick leave) and income actually received during a period of incapacitation.

m. Medical Care. Treatment required to maintain or restore the health of an individual. Medical care may include, but is not limited to, inpatient and outpatient treatment, nursing services, medical examination, drugs, and other medically indicated appliances or services.

n. Member/Reservist. A member of a Ready Reserve component of the Navy or Marine

Corps including the Individual Ready Reserve and the Selected Reserve.

o. Misconduct. The result of grossly negligent conduct that demonstrates a reckless disregard for foreseeable and likely consequences of an action. Simple or ordinary negligence, or carelessness, standing alone, does not constitute misconduct. The fact that the conduct violates a law, regulation, or order, or is engaged in while intoxicated, does not, of itself, constitute a basis for a misconduct determination.

p. NOE. A document authorizing benefits provided by law through this instruction for any condition incurred or aggravated by reserve service requiring medical care that extends beyond the termination of a period of duty.

q. Physical Incapacitation. Any medical impairment due to injury, illness, or disease regardless of degree, which reduces or precludes an individual's ability to perform the duties of his/her office, grade or rating. Certain conditions and defects designated by the Surgeon General do not constitute physical incapacitation, and are delineated in paragraph 1007 of reference (i).

r. Presumption. An inference of the truth of a proposition or fact, reached through a process of reasoning and based on the existence of other facts. Matters which are presumed need no proof to support them, but may be rebutted by evidence to the contrary.

s. Prior Approval. Approval by OMDA required in advance of non-emergency medical care to be received from non-federal medical providers.

t. Supplemental Care or Services. Care or services, including any additional material, professional, diagnostic, consultative, or other personal services ordered by qualified uniformed service providers, and obtained for the care of a patient, when the federal or military MTF retains medical or dental management but the required care is not available at that facility.

u. Traveling to/from Duty or Training (Portal-to-Portal). A Reservist shall be eligible for coverage under this instruction in the event that such member incurs or aggravates an illness, injury or disease while traveling directly to or from duty or training.

v. Unfit for Duty. A determination or finding by the Physical Evaluation Board (PEB) that a service member's medical condition interferes with the performance of his or her normal duties such that the member cannot continue to perform adequately the normal duties of their office, grade, rank or rating and should be separated or retired as appropriate.

w. Uniformed Services Treatment Facility (USTF). Former Public Health Services medical treatment facilities with whom the Department of Defense has contracted to provide care to beneficiaries eligible to receive care in USTFs. Reference (k) contains a list of these facilities.

x. Willful Neglect. Deliberate or intentional disregard for the consequences of a known or intended act. Failure of an individual Reservist to report an injury, illness or disease which results in service aggravation of that condition will result in the member's ineligibility for benefits under this instruction.

y. Medical Retention Standards. The medical defects and conditions listed in enclosure (3) of reference (i) that constitute conditions that may render a reservist unfit for further military service.

8. Release from Duty Status

a. Application for NOE benefits under this instruction because of a physical incapacitation shall be initiated by the Active Duty command where the member is performing duty prior to release from such duty. The application will be forwarded via the member's reserve activity for submission to the appropriate NOE authority.

b. A Reservist who incurs a physical incapacitation while performing IDT, while on AT, ADT, IADT (2nd increment), or ADSW orders for 30 days or less, or while traveling to or from such duty must be released from duty no later than the conclusion of the active duty or inactive duty period as stated on the orders at the time the physical incapacitation occurred and application for benefits under this instruction have been initiated.

c. A Reservist who incurs a physical incapacitation while on a continuous set of orders for 31 days or more is considered an active duty member and is not normally eligible for an NOE. These members will be retained in an active duty status until they are found "fit for release" or the PEB has issued a Notification of Decision per reference (i). At the discretion of the member, a Reservist on IADT for 31 days or more who has been found unfit for duty may request release from active duty and apply for incapacitation benefits under references (a), (c), and (d) in lieu of remaining on active duty. The member must be counseled and acknowledge in writing comprehension of the consequences of remaining in an active status with associated benefits, or accepting release from active duty with entitlements and benefits provided by a NOE under this instruction. The acknowledgment will be documented in the service record.

9. Reporting Incapacitating Conditions

a. Commands issuing orders to Reservists for ADT, AT, IADT, IDT, or ADSW for 30 days or less will include adequate instructions to report promptly to the gaining command any previous non-service-incurred injury or illness, or any illness or injury incurred during a period of duty including travel directly to or from a period of duty; and that a non-service-incurred injury, illness, or disease disqualifies a Reservist from duty until medical documentation from a civilian physician certifies that further medical care is no longer required.

b. Commanding Officers shall:

(1) Instruct Reservists reporting for duty to promptly report any illness, injury, or disease.

(2) Upon receipt of a report, or observation, of injury, illness, or disease of a Reserve member, while in a duty status, over whom the commanding officer has cognizance, notify the appropriate NOE issuing authority. The notification should contain as much information as is known about the extent of the illness or injury and the prognosis for recovery. An interim LOD determination shall be completed and forwarded to the NOE issuing authority within 7 days of notification of such injury, and forwarded along with the request for incapacitation benefits. Should a final LOD determination find that the injury, illness, or disease was not incurred in the LOD, the NOE issuing authority will take action to immediately stop incapacitation benefits.

(3) Provide a complete copy of the member's military medical record and related civilian medical documentation with all application packages.

(4) Disqualify from duty any Reservist reporting with a physical condition or who, during a period of duty, incurs an injury, illness, or disease which renders the member physically incapacitated. A Reservist so disqualified shall not be returned to a duty status until found physically qualified by a military or contract physician.

(5) Upon request, provide without delay to the MTF a copy of the NOE, LOD determination, and any pertinent medical documents regarding any illness, injury, or disease of a reserve member.

(6) Upon notification of a determination of eligibility for NOE benefits, notify the Reservist and ensure the member is counseled concerning their benefits and responsibilities, and rights of appeal if NOE has been denied.

c. Individual Reservists shall:

(1) Immediately report to the commanding officer any injury, illness, or disease incurred outside of duty (i.e., civilian incurred conditions) which might have an impact on the performance of normal duties or that may require treatment during or after a period of duty.

(2) Report any injury, illness, or disease incurred or aggravated during a period of duty prior to termination of such duty. This notification shall be made to the commanding officer via the medical officer or medical department representative.

(3) Make their status as a reservist known to the health care provider and reserve liaison officer when seeking medical or dental care which could lead to incapacitation benefits, when seeking treatment for a condition which existed prior to entry, or when treatment will be required beyond the scheduled release date.

(4) Follow the requirements of this instruction. Non-compliance with the administrative requirements of this instruction or failure to cooperate with medical or administrative officials in connection with the administration of this program may result in denial or suspension of NOE benefits.

10. Determination of Eligibility for Incapacitation Benefits. The NOE authority will determine eligibility for benefits for Reservists with a physical incapacitation using the following criteria:

a. Reservist Unable to Perform Military Duties. A Reservist who is physically incapacitated as a result of an injury, illness, or disease incurred or aggravated while in a duty status or authorized leave/liberty, in the LOD will have benefits administered per reference (c), sections g(1) and g(2).

b. Reservist Able to Perform Military Duties but Unable to Perform Civilian Duties. Reservists who are physically able to perform military duties but unable to work in their civilian employment capacity as a result of an injury, illness, or disease incurred or aggravated while in a duty status or authorized leave/liberty, in the LOD will have benefits administered per reference (c), sections h(1) and h(2).

c. NOE benefits will be terminated by the NOE authority as specified in paragraph 18 if the member fails to comply with the requirements of this instruction.

11. Authorizing Benefits for Reservists with Physical Incapacitations

a. Upon receipt of a report of injury, illness, or disease from a commanding officer, the NOE authority shall review the request to issue an NOE, determine the member's eligibility for NOE benefits, and notify the unit and member of the determination.

b. Reserve activities may not authorize non-emergency medical care at MTFs without an NOE issued by the appropriate NOE authority.

c. The NOE authority shall apply the following rules in determining a Reservist's entitlement to incapacitation benefits under paragraph 12.

(1) Members issued an NOE will be provided medical and dental treatment under paragraph 12d.

(2) A claim for benefits under paragraph 10a shall be submitted by the member via the commanding officer of the Naval Reserve Activity (NRA). The claim shall include the following information:

(a) A statement from the Reservist's employer setting forth total earned income.

(b) If the Reservist is self-employed, satisfactory proof from the member of monthly civilian earned income.

(c) If the Reservist was not employed when he or she entered on duty, a statement from the member to that effect must be submitted.

(3) A claim for benefits under paragraph 10b shall be submitted by the member via the NRA commanding officer. The claim shall include the following information:

(a) A statement from the Reservist's employer declaring why the member is unable to perform the functions required in his/her civilian employment due to the injury, illness or disease, and stating the amount of earned income the member lost as a result of the incapacitation.

(b) If the Reservist is self-employed or seasonally employed, satisfactory proof from the member of lost civilian earned income.

(4) The Reservist must submit a claim as outlined in this paragraph to the NOE authority for each month the individual is authorized NOE Benefits. Each month the reserve activity commanding officer shall verify the information provided in the claim.

(5) When a Reservist is hospitalized, and an NOE covers the period of hospitalization, the commanding officer of the MTF in which the member is hospitalized or which has medical cognizance (in cases of Reserve members in civilian hospitals), or the member's activity commanding officer will forward a monthly letter to the NOE authority showing that for the period in question the Reservist was an inpatient being treated for an injury, illness, or disease for which the NOE was issued.

(6) When not hospitalized, the Reservist shall be medically examined at least every 30 days to determine the member's fitness for duty as defined in this instruction. The examination will be

conducted when available, by a uniformed services medical officer. If a uniformed services officer is not available for the 30-day examination, a Department of Veterans Affairs (DVA) physician, or a civilian physician when authorized by the OMDA, will conduct the 30-day examination. A report of examination shall be prepared and forwarded to the NOE authority, and shall include descriptive clinical findings and provide a written opinion as to whether the member has recovered sufficiently to perform his/her duties.

(7) The NOE authority shall, upon receipt of the letter of hospitalization or report of medical examination and pay documents, determine the member's continued eligibility for benefits and, when appropriate, notify the cognizant disbursing authority to make payment for the period involved.

d. When the commanding officer believes a member will not recover sufficiently to perform his/her duties within a reasonable period of time, normally 12 weeks, the member will be processed as outlined in paragraph 16.

12. Benefits. The following benefits are authorized for individuals who qualify for NOE Benefits under paragraph 10:

a. Incapacitation Pay

(1) Upon receipt of the appropriate documentation, incapacitation pay will begin within 30 days of the NOE authority receiving a notification of injury, illness, or disease.

(2) A Reservist qualified under paragraph 10a is eligible for incapacitation pay equal to the military pay and allowances for the member's grade and years of service, less any civilian earned income as defined in paragraph 7c.

(3) A Reservist qualified under paragraph 10b is eligible for incapacitation pay equal to lost civilian earned income as a result of the injury, illness, or disease but not to exceed full pay and allowances for the member's grade and years of service.

(4) Incapacitation pay may be authorized for not more than a period of 6 months. Extending incapacitation pay beyond the 6-month period requires the approval of the Assistant Secretary of the Navy (Manpower & Reserve Affairs) (ASN(M&RA)) as set forth in paragraph 13.

b. Active Duty Pay and Allowances.

Reservists eligible for incapacitation pay under paragraph 12a are also authorized active duty pay and allowances for the period of the orders being performed, including authorized travel time when the injury, illness, or disease was incurred or aggravated while on active duty.

c. Inactive Duty Training Pay. A Reservist eligible for incapacitation pay under paragraph 12a is authorized compensation for IDT pay at the rate of 1/30 of 1 month's basic pay for each scheduled IDT period unable to be performed because of the physical incapacitation. Total monthly payments to the member for the period, including incapacitation pay under paragraph 12a and compensation of IDT pay, may not exceed pay and allowances of an active duty member of identical pay grade and years of service of the Regular component for an identical period of time. The Reserve activity commanding officer shall each month certify to the appropriate NOE authority the number of drills the member missed due to incapacitation during the preceding month.

d. Medical and Dental Care

(1) Reservists authorized NOE benefits are entitled to the medical and dental care appropriate for the treatment of the physical incapacitation until the resulting condition cannot be materially improved by further hospitalization or treatment. Entitlement includes subsistence in kind during hospitalization when not entitled to Basic Allowance for Subsistence.

(2) Reservists on active duty orders for a period of 31 days or more are entitled to the same health care benefits as members of the Regular component.

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e. Travel and Transportation. A Reservist is eligible for travel and transportation, or a monetary allowance in lieu thereof as outlined in reference (j), for travel to and from the member's legal residence incident to medical and/or dental care authorized under paragraph 12d.

f. Duty Credit. Issuing an NOE does not constitute assignment to duty and the member may not perform IDT, IDTT, AT, ADT or ADSW during the period which the NOE is effective. The period is not creditable as active duty or inactive duty training. In order to maintain satisfactory participation for retirement purposes, completion of correspondence courses for retirement point credit is authorized during such period.

g. Period of Entitlement. The member is entitled to incapacitation pay, medical and dental care, travel to and from the place of medical treatment/examination and subsistence, if authorized, until the member is found FIT FOR DUTY or final disposition by the Disability Evaluation System (DES) provided he or she is in compliance with the requirements as set forth in this instruction.

13. Extension of Incapacitation Pay

a. The Reserve activity shall monitor the NOE incapacitation period and assist the Reservist to initiate a request for continuation of incapacitation pay at least 60 days prior to the expiration of the NOE. The request shall be forwarded to the NOE authority for review. If the circumstances for the extension are within the criteria established in paragraph 13b, the NOE authority will forward the request to ASN(M&RA).

b. Requests to extend payment of incapacitation pay must include a brief chronological case history, a copy of the medical board which reflects the current status of the case, or a statement from the MTF certifying a medical board will not be initiated and the reason for not convening a board.

c. Extension of the NOE, if approved by ASN(M&RA), will be effective for a period of 6 months.

d. Requests to extend NOE benefits beyond 1 year must include certification from Chief Bureau of Medicine and Surgery (CHBUMED) that the condition is correctable, or certification that the Reservist's case is being processed in the DES.

14. Medical Treatment

a. Sources of Treatment. Medical or dental care authorized by an NOE should be obtained from a Department of Defense (DoD) MTF, USTF, or a DVA Medical Center (DVAMC). When treatment at a DoD MTF is not reasonably available, members may be authorized care at a civilian MTF by the OMDA. Prior approval for non-emergency civilian medical care is required from OMDA.

b. Monitor and Transfer to a DoD MTF. When a member is admitted to a civilian hospital, OMDA will make weekly determinations of the necessity for continued hospitalization or for transfer to a DoD MTF or DVAMC for evaluation or treatment. The member should be transferred to a DoD MTF, USTF, or DVAMC when extended hospitalization is necessary, and transfer will not jeopardize the health or impede the convalescence of the member. DoD MTFs should be the primary facility used because of the expense and treatment constraints at USTFs and DVAMCs. Eligibility of Reservists for medical and/or dental care, and the extent and conditions under which care may be provided, are contained in reference (k).

c. Medical Records. Activity commanding officers must ensure detailed entries about any reported injury, illness, or disease no matter how slight, are made in the Reservist's health record so the member is not deprived of possible future benefits under other existing laws. When the health record is maintained by another activity, necessary information will be

forwarded to that activity for inclusion in the member's health record.

(1) If the Reservist is admitted to a DoD MTF, the health record shall accompany the member. If admitted to a USTF, VAMC, foreign military service, or civilian hospital, the health record shall be retained by the activity having custody of the member at the time of hospitalization. Alternative disposition may be directed by an NOE authority. When the Reservist is admitted to a DVAMC, the member's commanding officer will make a copy of the military health record available to the DVAMC upon request.

(2) Reservists transferred or released from a DVAMC or civilian hospital shall execute an authorization for release of their medical treatment records to their Reserve activity. Refusal or failure of the member to authorize release or otherwise provide those records is cause for immediate notification to the member by the NOE issuing authority of termination of benefits and DES processing per paragraph 18a(3).

15. Emergency Treatment. Nothing in this instruction shall be construed to preclude emergent and immediate medical or surgical treatment of a Reservist during any period of training duty. The circumstances of origin of the condition with regard to having been incurred during or aggravated by service will be resolved after the emergency has been stabilized. A Reservist presenting himself or herself for emergency treatment after termination of training duty, stating that the condition is related to an injury, illness, or disease incurred during or aggravated by an earlier period of duty, will be examined. No treatment beyond that justified to stabilize the determined emergency is authorized until the service connection is validated. Questions relating to local authority may be referred to the appropriate command listed in paragraph 20.

16. Disposition of Reservists not Meeting Medical Retention Standards

a. Members determined by their command to be not physically qualified for retention in the reserves due to an injury, illness, or disease incurred or aggravated in the line of duty shall be referred to a Medical Board for evaluation per the requirements of reference (I), Chapter 18 for further determination of any requirement for referral to the PEB for determination of the member's fitness for continued military service and, if appropriate, entitlement to benefits.

b. Members determined by their command to be not physically qualified for retention in the reserves due to an injury, illness, or disease not in the line of duty may be processed per reference (i) upon request of the member. Upon such request, copies of all medical information, civilian or military, should be included in the referral to the PEB.

c. If the member's case is referred to the PEB for processing per reference (i), the member must be medically evaluated at least every 3 months. The commanding officer of the NRA will forward the results to the NOE authority for pay entitlement determination and a copy to PEB for continuing DES processing.

17. Administrative Suspension of Benefits

a. Incapacitation pay for authorized periods and IDT pay for a Reservist may be suspended for failure or refusal by the member to comply with rules or procedures of this instruction.

b. The NOE authority shall inform the Reservist whose pay has been suspended and his or her commanding officer of the reasons for the action. The Reservist may request reconsideration of the suspension action which shall be forwarded via the NOE authority taking the suspension action to Office of the Judge Advocate General (OJAG) (Code 32).

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c. If, during the suspension period, the Reservist complies with the requirements of the NOE and this instruction, the NOE authority may reinstate incapacitation pay for the period of non-compliance. The NOE authority will determine the effective date that benefits will resume based on the reason for noncompliance and the date the Reservist once again met the NOE requirements.

18. Termination of Incapacitation Benefits. The NOE authority shall terminate incapacitation benefits as follows:

a. NOE authorities may terminate incapacitation pay and IDT pay authorized under paragraph 12 for the following reasons:

(1) When a final LOD determination finds that the injury, illness or disease was not incurred in the LOD.

(2) Failure or refusal by a Reservist to obtain, or provide a report of, a medical examination every 30 days as required by paragraph 11c(6).

(3) The member's refusal to submit to medical, dental, or surgical treatment necessary to restore the member to full duty. If the NOE authority determines the refusal is unreasonable based on competent medical authority, the member will be advised that continued refusal may result in a finding of willful neglect and may result in loss of incapacitation benefits. However, a Reservist who refuses medical treatment on a bona fide religious basis will need to have a medical board convened as outlined in reference (I) to determine the appropriateness to the refusal. The member may be eligible for continued benefits, if a bona fide religious basis exists.

(4) Failure to authorize release of requested medical documentation from civilian sources as required in paragraph 14c(2).

(5) Failure to obtain a medical evaluation from a physician when directed by medical or administrative officials.

(6) Failure to comply with provisions of this instruction.

(7) If the NOE authority determines the NOE was issued in error.

b. Per reference (c), incapacitation pay authorized under paragraph 12a shall terminate when a member has recovered sufficiently to be released from further medical care, upon final disposition by the DES, statutory discharge or retirement, or upon termination of the periods authorized by an NOE including any authorized extensions, whichever occurs first.

c. Benefits authorized by this instruction terminate upon the member's separation from the naval service.

19. Appeals. A Reservist denied incapacitation benefits, or whose benefits have been suspended or terminated subsequent to the date of this instruction may appeal that decision.

a. Notification of denial, suspension or termination shall be made via certified mail.

b. The appeal must be submitted within 60 days of receipt of the notification of denial, suspension or termination.

c. The appeal should set forth in detail the reasons for disagreement with the unfavorable determination and shall be forwarded, via the NOE authority, to OJAG (Code 32) for a final determination of entitlement to benefits.

20. Assistance to Field Activities. Problems which cannot be resolved at field activities may be directed to:

a. COMNAVRESFOR (N006).

b. CMC (RAM 3).

c. OJAG (Code 32), for questions concerning LOD determinations and appeals.

d. CHBUMED (MED 25).

21. Reserve Component Incapacitation Management Report. Within 60 days of the end of each fiscal year, CNO and CMC shall submit to the ASN(M&RA) a management report of the incapacitation actions and benefits awarded under this instruction, including evaluations in the following areas:

a. Caseload: trends in incapacitating conditions, issuance/denial of NOEs, extensions, suspensions, and terminations of benefits.

b. Timeliness of Notices of Reported Conditions and NOE determinations.

c. Areas shown in the analysis which need improvements with recommended actions.

22. Responsibilities

a. ASN(M&RA) is responsible for overall policy control and execution of Reserve incapacitation benefits and disability processing through the PEB.

b. CNO and CMC are responsible for efficient, effective management and disposition of members of the Reserve Components who have an illness, injury, or disease and qualify for benefits under this instruction.

c. CNO and CMC will make determinations of eligibility for incapacitation benefits within the limitations in paragraph 6.

d. COMNAVRESFOR or COMMAR-FORRES, if delegated NOE issuing authority, will establish procedures for:

(1) Reporting occurrences of incapacitating injuries, illnesses, or diseases by Reservists as reported by Reserve activity commanders and commanding officers.

(2) Notifying designated authorities in every case of Reservists incurring or aggravating incapacitating conditions when medical treatment extends beyond the scheduled period of duty.

(3) Referring Reservists found to have incapacitating conditions incurred or aggravated in military service to a DoD MTF for evaluation of physical qualification per reference (1) for duty or retention.

(4) Ensuring members awaiting issuance of an NOE or authorized benefits under an NOE do not participate in training duty or active duty until found physically qualified.

e. CHBUMED will:

(1) Establish procedures to ensure that all medical records and reports of reservists referred to MTFs for evaluation for injuries, illnesses, or diseases are appropriately entered in the reservist's medical/dental record jacket.

(2) Ensure medical board reports are completed within the time standards established in reference (1).

(3) Ensure commanding officers of Reserve units are kept informed of the medical status of incapacitated reservists.

23. Approval. The entitlement portion of this instruction has been approved by the Defense Finance and Accounting Service (DFAS) under procedures prescribed by the Secretary of Defense according to 37 U.S.C. 1001. DFAS Item Number A-78 (NOTAL) applies to this instruction.

24. Reports. The reporting requirements contained in this instruction are exempt from reports control by SECNAVINST 5214.2B.

BERNARD ROSTKER
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

SECNAVINST 1770.3B

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